STATE OF MICHIGAN

COURT OF APPEALS

LISA ANN ROMANO NEAL and JOEY NEAL, Plaintiffs-Appellants, v TEAM KALAMAZOO LLC, Defendant-Appellee.	UNPUBLISHED August 17, 2006 No. 267321 Kalamazoo Circuit Court LC No. 04-000584-NO

Before: Zahra, P.J., and Neff and Owens, JJ.

PER CURIAM.

In this premises liability case, Defendant, Team Kalamazoo, LLC, appeals by leave granted an order entered by the circuit court denying defendant's motion for summary disposition. We reverse.

I Basic Facts and Proceedings

Plaintiff Lisa Ann Romano-Neal (plaintiff)[1] attended a Kalamazoo Kings baseball game at Homer Stryker Field with her family on August 18, 2003. She sat in the bleachers along the first base line. Plaintiff and her family decided to leave before the game ended. They left the bleachers and walked towards the entrance/exit they used to enter the sporting complex. As they walked towards the exit, plaintiff heard someone call her name. Plaintiff stopped. She turned towards the voice and saw a mother of one of her son's classmates. The woman asked plaintiff if her son was coming to the birthday party the woman was throwing for her son. As plaintiff answered, she stood on the sidewalk, approximately 12 to 15 feet away from a 6-foot high chain-link fence that separated the playing field from a walkway running down the first base line. She stood looking in the direction of the batter, but could not see the batter because her view of the field was obscured by a promotional deck and people standing along the fence. She then heard her husband yell, "look out." She looked up and saw a ball coming over the promotional deck. The ball struck her between her eyes, knocking her to the ground.

[1] Lisa Ann Romano-Neal's husband, Joey Neal, alleges a claim for loss of consortium. Because his claim is merely derivative, the designation "plaintiff" shall refer only to Lisa Ann Romano-Neal.

Defendant moved for summary disposition under MCR 2.116(C)(10). Defendant primarily argued that plaintiff's action was barred by the limited duty rule adopted in *Benejam v Detroit Tigers, Inc*., 246 Mich App 645; 635 NW2d 219 (2001). Defendant further argued that plaintiff's action was barred by an application of the open and obvious danger doctrine. Defendant asserted that the risk of being hit by a baseball leaving the field of play was a "well-known risk." It also asserted that there were other means of exit from the facility that would have protected plaintiff from foul balls. Defendant also argued that plaintiff action was barred because she contractually assumed the risk based on disclaimer language appearing on the back of her admission ticket.

Plaintiff responded that the limited duty rule does not apply on the facts of this case because the rule is limited to the context in which a spectator is injured while in a seat watching the game. Plaintiff also argued that a genuine issue of material fact existed with regard to whether defendant acted reasonably in constructing and placing a promotional deck that would block plaintiff's view of the hazard at issue. Finally, plaintiff argued that there was no contractual assumption of the risk because the alleged contract would be an adhesion contract, and because there was no express contractual relationship.

After conducting a hearing, the circuit court denied defendant's motion. Defendant filed a motion for leave to appeal (interlocutory) with this Court, which was granted.[2]

II Analysis

A Standard of Review

> "This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." Summary disposition is appropriate under MCR 2.116(C)(10) when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." Accordingly, when deciding a motion under MCR 2.116(C)(10), this Court reviews "the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties." [*Royal Property Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 713; 706 NW2d 426 (2005) (Citations omitted).]

In addition, this Court reviews questions of law de novo. Whether one party has a duty of care giving rise to a tort action for negligence upon its breach presents a question of law this Court reviews de novo. *Benejam supra* at 648.

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[2] *Lisa Ann Romano Neal v Team Kalamazoo LLC*, unpublished order of the Court of Appeals, entered March 28, 2006 (Docket No. 267321).

B Limited Duty Rule

We conclude that the trial court erred in not granting defendant's motion for summary disposition on the basis of the limited duty rule. In *Benejam*, this Court held "that a baseball stadium owner that provides screening behind home plate sufficient to meet ordinary demand for protected seating has fulfilled its duty with respect to screening and cannot be subjected to liability for injuries resulting to a spectator by an object leaving the playing field." *Id*. at 658. In doing so, this Court adopted the limited duty rule, which:

> does not ignore or abrogate usual premises liability principles. Instead, it identifies the duty of baseball stadium proprietors with greater specificity than the usual "ordinary care/reasonably safe" standard provides. The limited duty precedents "do not eliminate the stadium owner's duty to exercise reasonable care under the circumstances to protect patrons against injury." Rather, these precedents "define that duty so that once the stadium owner has provided 'adequately screened seats' for all those desiring them, the stadium owner has fulfilled its duty of care as a matter of law." The limited duty doctrine establishes the "outer limits" of liability and "thereby prevents a jury from requiring a stadium owner to take precautions that are clearly unreasonable." [*Benejam, supra* at 654 (citations omitted).]

Plaintiff primarily argues that *Benejam* does not apply to spectators that are not in the bleachers. However, the limited duty rule defines the duty of baseball stadium proprietors in terms of "injuries resulting to *a spectator* by an object leaving the playing field." *Benejam, supra* at 658 (Emphasis added). *Benejam* applies to "a spectator," not just seated spectators. Thus, because the limited duty rule applies regardless of whether a spectator is seated or standing, we reject plaintiff's argument.

The trial court opined that the jury should decide whether an obstruction between the plaintiff and the batter created an "unreasonable risk to spectators." However, allowing the jury to make this determination would compel the jury to define the duty of baseball stadium proprietors in regard to "injuries resulting to a spectator by an object leaving the playing field." This duty has already been defined in *Benejam*: "a baseball stadium owner that provides screening behind home plate sufficient to meet ordinary demand for protected seating has fulfilled its duty with respect to screening and cannot be subjected to liability for injuries resulting to a spectator by an object leaving the playing field." Thus, because there is no claim here that defendant failed to fulfill its limited duty under *Benejam*, the circuit court erred in not granting defendant's motion for summary disposition.

Last, we note that the circuit court, in its opinion, stressed that plaintiff was leaving the baseball stadium, implying that she was no longer a spectator. We conclude there is no genuine question that plaintiff was a spectator. Plaintiff's admission to the stadium was paid and she watched most of the game from the bleachers. While exiting the stadium, she remained in an area where others nearby were watching the game. As plaintiff points out in her brief on appeal, Joseph Rozenhagen, owner of the baseball team, "personally witnessed this incident; he was standing at his seat in the bleachers behind [plaintiff] as the ball flew over the top of the fence and struck [plaintiff]." In addition, plaintiff indicated in her deposition that several people stood lining the nearby fence. Given that plaintiff watched the game and was struck by the ball in an

area where others were watching the game, she cannot convincingly maintain that she was not a spectator.

Because this issue is dispositive of plaintiff's claim, we need not address defendant's claims that the open and obvious doctrine and express contractual assumption of risk provide alternative grounds for summary disposition.

Reversed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Donald S. Owens